



A TRAINING COURSE FOR MITIGATION BANKING INTERAGENCY REVIEW TEAMS



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Reference Document: The Role of State and District Mitigation Banking Policy and Regulations

A. State Mitigation Banking Policies

State Statutes, Regulations, and Guidance Documents Related to Mitigation and Mitigation Banking.¹

State	Statute(s)	Regulation(s)	Guidance Document(s)
Alabama	*	*	*
Alaska	*	*	*
Arizona	*	*	*
Arkansas	Ark. Code Ann. §§15-22-1001 – 1012.	Ark. Reg. §§1201.1 – 1206.3.	Arkansas Department of Environmental Quality, Arkansas Soil and Water Conservation Commission, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, USDA Natural Resources Conservation Service. “Umbrella Memorandum of Agreement for the Establishment, Development, and Operation of an Arkansas State-Sponsored Wetlands Mitigation Bank Program.” 1998.

¹ General data sources for this chart include: Environmental Law Institute. September 2002. *Banks and Fees: The Status of Off-Site Wetland Mitigation in the United States*. Washington, D.C.: Environmental Law Institute. Appendix E, pp. 165-169. Available at: http://www.elistore.org/reports_detail.asp?ID=10695; Environmental Law Institute. January 2005. *State Wetland Program Evaluation: Phase I*. Washington, D.C.: Environmental Law Institute. Available at: http://www.elistore.org/reports_detail.asp?ID=11079; Environmental Law Institute. June 2006. *State Wetland Program Evaluation: Phase II*. Washington, D.C.: Environmental Law Institute. Available at: http://www.elistore.org/reports_detail.asp?ID=11152; Environmental Law Institute. March 2007. *State Wetland Program Evaluation: Phase III*. Washington, D.C.: Environmental Law Institute. Available at: http://www.elistore.org/reports_detail.asp?ID=11215.

State	Statute(s)	Regulation(s)	Guidance Document(s)
California	Cal. Fish & Game Code §§1175-1796, 1850 – 1851.	Cal. Code Reg. tit. 23, § 3856(h)(5).	California Resources Agency and California Environmental Protection Agency. "Official Policy on Conservation Banks." April 7, 1995. ²
Colorado	*	*	*
Connecticut	*	*	*
Delaware	*	7-7201 DEL. CODE RAGS. § 1 et seq. ³	*
Florida	Fla. Stat. ch. 373.4135-.4137, ch. 373.414, ch. 403.9322.	Fla. Admin. Code Ann. R. 62-342.100 – 62-342.850.	"Joint State/Federal Mitigation Bank Review Team Process for Florida." October 1998. ⁴
Georgia	*	*	Savannah District, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Region IV, U.S. Fish & Wildlife Service, Southeast Region, and Georgia Department of Natural Resources. "Guidelines on the Establishment and Operation of Wetland Mitigation Banks in Georgia." Undated; ⁵ "Addendum 1 to the Guidelines." January 16, 1996. ⁶
Hawaii	*	*	*
Idaho	*	*	*
Illinois	*	*	*
Indiana	*	*	Louisville and Detroit Districts, U.S. Army Corps of Engineers, <i>et al.</i> (Indiana Mitigation Banking Review Team). "Interagency Coordination Agreement on Wetland Mitigation Banking Within the State of Indiana." April 24, 2002; ⁷ Natural Resources Commission. Revised November 14, 2006. "Wetlands and Habitat Mitigation." Information Bulletin #17. Indiana Register. 20 IR 3546. ⁸

² See: <http://ceres.ca.gov/wetlands/policies/mitbank.html>.

³ See: <http://www.dnrec.state.de.us/water2000/Sections/SurfWater/Library/RGCWP.pdf>

⁴ See: <http://www.saj.usace.army.mil/regulatory/permitting/mitigation/mBanks.htm>.

⁵ See: <http://www.sas.usace.army.mil/bankguid2.htm>.

⁶ See: <http://www.sas.usace.army.mil/ADDEND1.doc>.

⁷ See: <http://www.lre.usace.army.mil/functions/rf/html/inbank.pdf>.

State	Statute(s)	Regulation(s)	Guidance Document(s)
Iowa	*	*	Iowa MBRT. "Mitigation Banking in Iowa." Draft. ⁹
Kansas	*	*	*
Kentucky	Ky. Rev. Stat. Ann. §150.255.	*	*
Louisiana	La. Rev. Stat. Ann. §49:214.41.	La. Admin. Code tit. 43:l §724(F).	*
Maine	Me. Rev. Stat. Ann. Tit. 38, §480-Z.	310 Code Me. R. §§5, 7.	Maine Land Use Regulation Commission. "Wetland Compensation Guidelines." 1998. ¹⁰
Maryland	Md. Regs. Code tit. 26, §§23.04.01 - .07, 26.24.05.01.	Md. Code §5-910.	*
Massachusetts	*	*	*
Michigan	*	12 Mich. Admin. Code R. §§281.951-.961. ¹¹	"MDEQ Wetland Mitigation Banking Handbook." September 2001. ¹²
Minnesota	Minn. Stat. Ann. §103G.2242.	Minn. R. §§8420.0200(1), .0510, .0630, .0700 - .0760.	Minnesota Board of Water & Soil Resources. "Wetland Banking Fee Policy." December 2003 ¹³ ; Minnesota Board of Water & Soil Resources. "Wetland Banking Fee Policy." September 2007. ¹⁴
Mississippi	*	*	*
Missouri	*	*	*
Montana	*	*	*
Nebraska	Neb. Rev. Stat. §39-1320.	*	*

⁸ See: <http://www.in.gov/legislative/register/20061213-IR-312060562NRA.xml.pdf>.

⁹ Referenced in: Smith, Duane and Steve Andrlle, Dennis Kroeger. November 2006. "Smart Wetlands Mitigation for Iowa Department of Transportation Projects." Iowa Department of Transportation. http://www.ctre.iastate.edu/reports/wetlands_mitigation.pdf.

¹⁰ See: <http://www.maine.gov/tools/whatsnew/attach.php?id=2811&an=1>.

¹¹ See:

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=28100951&Dpt=EQ&RngHigh=

¹² See: <http://www.deq.state.mi.us/documents/deq-water-wetlands-webhandbook.pdf>.

¹³ See: <http://www.bwsr.state.mn.us/wetlands/wetlandbanking/fees.html>.

¹⁴ See: <http://www.bwsr.state.mn.us/wetlands/wetlandbanking/fees-2008.html>.

State	Statute(s)	Regulation(s)	Guidance Document(s)
Nevada	Nev. Rev. Stat. §244.388.	*	*
New Hampshire	*	*	*
New Jersey	N.J. Stat. Ann. §§13:9B-3 – 13:9B-5, 13:9B-13 – 13:9B-15.	N.J. Admin Code tit. 7, §§7A-14.1 – 14.6.	*
New Mexico	*	*	*
New York	*	*	Memorandum from Patricia Riexinger, New York Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, Bureau of Habitat, to Natural Resource Supervisors, New York Department of Environmental Conservation (Dec. 24, 2002).
North Carolina	N.C. Gen. Stat. §§143.214.8 - .11.	N.C. Admin. Code tit. 15A 02R.0302, 0402.	*
North Dakota	*	*	*
Ohio	Ohio Rev. Code Ann. § 6111.027.	Ohio Admin. Code §3745-1-54.	*
Oklahoma	*	*	Oklahoma Department of Transportation, Oklahoma's Office of the Secretary of the Environment, Oklahoma Conservation Commission, Oklahoma Department of Wildlife Conservation, Oklahoma Department of Environmental Quality, The Nature Conservancy, Tulsa District of the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, Natural Resources Conservation Service, and Federal Highway Administration. "Memorandum of Agreement." 1996.
Oregon	Or. Rev. Stat. §§196.600 - .665.	Or. Admin. R. 141-085-0115, 141-085-0260 – 0650.	Portland District, U.S. Army Corps of Engineers. "Wetland Mitigation Banking Guidebook for Oregon." October 2000. ¹⁵

¹⁵ See: <https://www.nwp.usace.army.mil/op/g/docs/documents/Mitigation%20Banking%20Guidebook.pdf>.

State	Statute(s)	Regulation(s)	Guidance Document(s)
Pennsylvania	*	*	*
Rhode Island	*	*	*
South Carolina	*	*	Charleston District, U.S. Army Corps of Engineers, <i>et al.</i> "Joint State/Federal Administrative Procedures for the Establishment and Operation of Mitigation Banks in South Carolina." September 2002. ¹⁶
South Dakota	*	*	*
Tennessee	Tenn. Code Ann. §70-1-302(e).	*	Memphis and Nashville Corps Districts, Tennessee Department of Environment and Conservation, Tennessee Wildlife Resources Agency, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Department of Agriculture, Federal Highway Administration, and Tennessee Department of Transportation. "General Wetland Banking Memorandum of Agreement." June 12, 1995.
Texas	12 Tex. Nat. Res. Code Ann. §§221.001-.048.	*	*
Utah	*	*	*
Vermont	*	*	*
Virginia	Va. Code Ann. §§28.2-1308, 33.1-223.2:1, 62.1-44.23.	4 Va. Admin. Code § 20-390-10 et. seq.	Virginia Marine Resources Commission and Virginia Institute of Marine Science. "Guidelines for Establishment, Use and Operation of Tidal Wetland Mitigation Banks In Virginia." 1998. ¹⁷

¹⁶ See: http://www.sac.usace.army.mil/assets/pdf/regulatory/mitigation/establishment_operation_mitigation_banks_SC-Sept-2002.pdf.

¹⁷ See: <http://www.mrc.state.va.us/regulations/bankguide.shtm>.

State	Statute(s)	Regulation(s)	Guidance Document(s)
Washington	Wash. Rev. Code Ann. §§90.84.005 - .070, 47.12.330 - .360.	*	Washington Department of Ecology, Seattle District, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Region 10. "Wetland Mitigation in Washington State: Part I – Agency Policies and Guidance." March 2006; ¹⁸ U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Federal Highway Administration, Washington State Department of Ecology, Washington State Department of Fish and Wildlife, Washington State Department of Transportation. "Washington State Department of Transportation Wetland Compensation Bank Program Memorandum of Agreement." February 15, 1994. ¹⁹
West Virginia	*	*	*
Wisconsin	Wis. Stat. § 281.37.	Wis. Admin. Code §§ 350.01 – 350.14.	St. Paul District, U.S. Army Corps of Engineers, Wisconsin Department of Natural Resources. "Guidelines for Wetland Compensatory Mitigation in Wisconsin." February 2002 ²⁰ ; Wisconsin Department of Transportation. "Wetland Mitigation Banking Technical Guidelines." July 1993.
Wyoming	Wyo. Stat. Ann. §§35-11-308 – 311.	Ch. 1 of Wyoming Water Quality Rules and Regulations § 12.	Wyoming Department of Environmental Quality. "Wyoming Statewide Wetland Mitigation Bank: Guidelines for Interpretation and Implementation." April 1995. ²¹

* If an entry is missing for a state, the state does not have wetland mitigation statutes, regulations and/or guidance.

¹⁸ See: <http://www.ecy.wa.gov/biblio/0606011a.html>.

¹⁹ See: <http://www.wsdot.wa.gov/NR/rdonlyres/D2CB4169-FC69-4422-BC99-B65E7FD4F6A6/0/WetlandMOAFinal1994.pdf>.

²⁰ See: http://dnr.wi.gov/org/es/science/publications/wetland_mitig.pdf.

²¹ See: http://deq.state.wy.us/wqd/watershed/Downloads/Wetlands/wet_guidelines.pdf.



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Reference Document: The Role of State and District Mitigation Banking Policy and Regulations

B. Bibliography of Corps District Mitigation Banking Policy

I. Some District Guidelines for Compensatory Mitigation

(NOTE: As noted below, these documents may also include specific guidelines on mitigation banking, in-lieu-fee mitigation, or mitigation checklists)

Baltimore District, U.S. Army Corps of Engineers. "Mitigation and Monitoring Guidelines." November 2004. (Includes Mitigation Plan Checklist.)
<http://www.nab.usace.army.mil/Regulatory/Mitigation/FinalMitigationGuidelinesNov04.pdf>

Buffalo District, U.S. Army Corps of Engineers. "Mitigation and Monitoring Guidance." October 2004. (Includes Mitigation Plan Checklist.)
<http://www.lrb.usace.army.mil/regulatory/mitigation.htm>

Charleston District, U.S. Army Corps of Engineers. "Guidelines for preparing a Compensatory Mitigation Plan" October 18, 2010.
<http://www.sac.usace.army.mil/?action=mitigation.home>

Chicago District, U.S. Army Corps of Engineers. "Chicago District Mitigation Requirements." October 2009 (Includes guidance on monitoring and performance standards.)
<http://www.lrc.usace.army.mil/co-r/mitgr.htm>

Fort Worth District, U.S. Army Corps of Engineers. "Draft Mitigation Guidelines." February 2004. (Includes guidance on monitoring and performance standards, and a mitigation plan checklist.)
<http://www.swf.usace.army.mil/pubdata/environ/regulatory/permitting/mitigation/fwmitguid.pdf>.

Honolulu District, U.S. Army Corps of Engineers. "Honolulu District Compensatory Mitigation and Monitoring Guidelines." February 14, 2005.
<http://www.poh.usace.army.mil/pa/publicNotices/SPN20050214%2004-448.pdf>

- Little Rock District, U.S. Army Corps of Engineers. "Compensatory Mitigation: Standard Operating Procedures." June 9, 2006. (Includes mitigation plan checklist.)
<http://www.swl.usace.army.mil/regulatory/pdf/compensatorymitigationguidelines.pdf>
- Los Angeles District, U.S. Army Corps of Engineers. "Final Mitigation Guidelines and Monitoring Requirements." April 29, 2004.
http://www.spl.usace.army.mil/regulatory/mmg_2004.pdf. (Includes Mitigation Plan Checklist.)
- New England District, U.S. Army Corps of Engineers. "New England District Mitigation Guidance." July 20, 2010. (Includes guidance on monitoring.)
<http://www.nae.usace.army.mil/reg/Mitigation/CompensatoryMitigationGuidance.pdf>
- New Orleans District, U.S. Army Corps of Engineers. "Compensatory Mitigation Standard Operating Procedures." June 29, 2004. (Includes Mitigation Plan Checklist.)
<http://www.mvn.usace.army.mil/ops/regulatory/mitigateSOP.pdf>
- New York District, U.S. Army Corps of Engineers. "Final Notice Announcing the Compensatory Mitigation Guidelines and Mitigation Checklist for Review of Mitigation Plans for the U.S. Army Corps of Engineers, New York District." January 10, 2005. (Includes Mitigation Plan Checklist and guidance on monitoring.)
<http://www.nan.usace.army.mil/business/buslinks/regulat/pnotices/mitfinal.pdf>
- Rock Island District, U.S. Army Corps of Engineers. "Rock Island District Mitigation and Monitoring Guidelines." June 29, 2004. (Includes Mitigation Plan Checklist.)
http://www2.mvr.usace.army.mil/Regulatory/Documents/mitigation_guidance6-29-04.pdf.
- Sacramento and San Francisco Districts, U.S. Army Corps of Engineers. "Mitigation and Monitoring Proposal Guidelines." December 30, 2004. (Includes Mitigation Plan Outline.)
http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/pdf/Mitigation_Monitoring_Guidelines.pdf.
- Savannah District, U.S. Army Corps of Engineers. "Standard Operating Procedure: Compensatory Mitigation." March 2004. (Includes Mitigation Plan Checklist and guidance on monitoring.)
<http://www.sas.usace.army.mil/SOP.04.doc>.

Seattle District, U.S. Army Corps of Engineers, Washington Department of Ecology, U.S. Environmental Protection Agency, Region 10. "Wetland Mitigation in Washington State: Part I – Agency Policies and Guidance." March 2006.

<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/guidance/index.html>

"Wetland Mitigation in Washington State: Part II – Developing Mitigation Plans." March 2006. (Includes Mitigation Plan Checklist and guidance on monitoring.)

<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/guidance/index.html>

St. Louis District, U.S. Army Corps of Engineers. "St. Louis District Mitigation and Monitoring Guidelines." June 30, 2004. (Includes Mitigation Plan Checklist.)

<http://www.mvs.usace.army.mil/permits/Guidelines.pdf>

St. Paul District, U.S. Army Corps of Engineers, Wisconsin Department of Natural Resources. "Guidelines for Wetland Compensatory Mitigation in Wisconsin." February 2002. (Includes outline of mitigation plan, guidance on establishing credit, guidance on mitigation banking, and example easement.)

<http://dnr.wi.gov/wetlands/mitigation/>

Wilmington District, U.S. Army Corps of Engineers. "Mitigation for Wetlands and Streams." December 2003.

<http://www.saw.usace.army.mil/wetlands/Mitigation/index.html>.

II. Mitigation Banking Guidance

Charleston District, U.S. Army Corps of Engineers, *et al.* "Joint State/Federal Administrative Procedures for the Establishment and Operation of Mitigation Banks in South Carolina." September 2002.

<http://www.sac.usace.army.mil/?action=mitigation.home>

Chicago District, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and U.S. Fish and Wildlife Service. "Interagency Coordination Agreement on Wetland Mitigation Banking within the Regulatory Boundaries of Chicago District, Corps of Engineers." June 2008

<http://www.lrc.usace.army.mil/co-r/MBICAJun2008.pdf>

Fort Worth District, U.S. Army Corps of Engineers. "Mitigation Banking in the Fort Worth District." December 23, 2008,

<http://www.swf.usace.army.mil/pubdata/environ/regulatory/PDF/Mitigation%20Banking%20Guidance%20December%2023%202008.pdf>

Louisville and Detroit Districts, U.S. Army Corps of Engineers, Natural Resources Conservation Service, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Indiana Department of Environmental Management and the Indiana Department of Natural Resources (Indiana Mitigation Banking Review Team). "Interagency Coordination Agreement on Wetland Mitigation Banking Within the State of Indiana." April 24, 2002.

<http://www.lre.usace.army.mil/functions/rf/html/inbank.pdf>

New Orleans District, U.S. Army Corps of Engineers. "Mitigation Banks & Areas." Undated.

<http://www.mvn.usace.army.mil/ops/regulatory/bank.asp>

Norfolk District, U.S. Army Corps of Engineers and VA DEQ.

"Mitigation Banks Do's and Don'ts." October 2009.

Go to RIBITS>Norfolk District>Bank & ILF Establishment or go to CD

Omaha District, U.S. Army Corps of Engineers. "The U.S. Army Corps of Engineers' Guidance for Compensatory Mitigation and Mitigation Banking in the Omaha District." August 2005.

<https://www.nwo.usace.army.mil/html/od-r/guidance-aug05.pdf>

Oregon Department of State Lands and Portland District, U.S. Army Corps of Engineers

"Wetland Mitigation Banking Guidebook for Oregon." October 2000.

http://www.oregon.gov/DSL/PERMITS/docs/mitbank_guidebk.pdf

San Francisco District, U.S. Army Corps of Engineers. "

Mitigation Banking Information" (includes templates for BEI, Conservation Easement, Management Plan, Property Assessment & Warranty)

<http://www.spn.usace.army.mil/regulatory/bankinfo.htm>

Savannah District, U.S. Army Corps of Engineers, "Draft Guidelines on the Establishment and Operation of Wetland and Stream Mitigation Banks in Georgia." November 2009

Go to RIBITS>Savannah>Bank & ILF Establishment

"Mitigation Bank Service Areas." Undated.

<http://www.sas.usace.army.mil/regulatory/banking.html>.

Wilmington District, U.S. Army Corps of Engineers. "Mitigation Banks." March 16, 2005. <http://www.saw.usace.army.mil/wetlands/Mitigation/mitbanks.html>.